



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Lynd Gear of Michigan, Inc.

File: B-224068

Date: September 2, 1986

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### DIGEST

Bid received under total small business set-aside, wherein the bidder represented that it was a small business but represented that not all supplies to be furnished would be manufactured by a small business, is not responsive and may not be considered for award.

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### DECISION

Lynd Gear of Michigan, Inc. (Lynd Gear), protests the rejection of its bid by the Department of the Army as nonresponsive under invitation for bids (IFB) No. DAAE07-86-B-A056. The Army rejected Lynd Gear's bid because the bid indicated that not all supplies to be furnished under the contract would be manufactured by a small business.

We dismiss the protest. We do so without obtaining a full report from the contracting agency, since it is clear from the information furnished by the protester that the protest is without merit. 4 C.F.R. § 21.3(f) (1986).

The solicitation is for the acquisition of 3,627 gear sets. The IFB contained the standard Small Business Concern Representation set forth in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.219-1 (1985). In this representation, the protester checked one box to indicate that it was a small business concern, but checked another box that indicated "not all supplies to be furnished will be manufactured or produced by a small business concern . . . ." As a result, the Army rejected the bid as nonresponsive.

Lynd Gear argues that it indicated that not all supplies would be manufactured by a small business concern because it had to purchase the forgings required to manufacture the gears from a large business. The gears themselves, however,

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as the end items to be furnished under the contract, would apparently be produced by Lynd Gear and thus the small business requirement would be satisfied.

While the failure to complete (or completing erroneously) the small business size status portion of the representation is a waivable minor informality, Extinguisher Service, Inc., B-214354, June 14, 1984, 84-1 CPD ¶ 629, a failure to complete properly the second portion of the representation is not waivable because it involves an obligation to provide supplies manufactured by a small business concern, a key element of a small business set-aside for supplies. See Mountaineer Leather, Inc., B-218453, May 6, 1985, 85-1 CPD ¶ 505.

A responsive bid is one that, if accepted by the government as submitted, will obligate the contractor to perform the exact thing called for in the solicitation. See FAR, 48 C.F.R. § 14.301 (1985). Thus, the bidder's intention to deliver products manufactured by a small business must be established at the time of bid opening and must be unequivocal for the bid to be responsive. Otherwise, the small business contractor could defeat the purpose of the set-aside program by delivering products from either small or large business firms as its own interest might dictate. Ginter Welding Inc., B-218894, May 29, 1985, 85-1 CPD ¶ 612.

Here, Lynd Gear represented that not all of the supplies to be furnished would be manufactured or produced by a small business concern. Because Lynd Gear's bid did not legally obligate itself to furnish small business products as required by the set-aside, its rejection as nonresponsive was proper.

The protester argues that the IFB clause is ambiguous, and, therefore, it interpreted the small business certification to apply to the components that would be used in manufacturing the end items to be supplied to the Army under the contract, not the end products themselves. We find no merit to this assertion. Included in the solicitation is a provision immediately following the Small Business Representation that states the "term supplies as used [in the Small Business Representation] refers to the actual end item to be delivered under the contract, as distinguished from component parts or materials used in the manufacture of the item." We fail to see how the clause can be considered to be ambiguous, at least as interpreted by Lynd Gear, in light of this provision.

The protest is dismissed.

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